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9 Otto 180
Oct 7. 1878

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. 235.

GEORGE BURT, PLAINTIFF IN ERROR,

vs.

MARIA M. PANJAND.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED OCTOBER 14, 1876.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judges of the circuit court of the United States for the fifth judicial circuit, northern district of Florida, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Maria M. Panjaud, plaintiff and George Burt, defendant, a manifest error hath happened to the great damage of the said George Burt, as by his complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgement be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the

2 Supreme Court of the United States together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court the day of , in the year of our Lord one thousand eight hundred and .

3 *Assignment of Errors.*

Of October Term, A. D. 1876.

GEORGE BURT
vs.
MARIA PANGOUD. } In error.

Afterwards, to wit, on the second Monday of October, A. D. 1876, in the same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said George Burt, by H. Bisbee, j'r, his attorney, and says that by the record and proceedings aforesaid there is manifest error in this, to wit: that by the record aforesaid it appears that said circuit court decided and held that Henry Holms, who was called to be sworn as a juror in said cause was not obliged to answer any question touching his qualification as a juror, and the cause of challenge to jurors specified in section eight hundred and twenty of Revised Statutes of the United States, and that it was optional with said juror to answer such questions or not, and the said Henry Holms, having been called to be sworn as a juror in said

4 court, and having been asked by defendant's attorney whether or not he aided or abetted the late rebellion against the United States of America, or give assistance to the enemies of the United States, and the said Henry Holms having refused to answer such questions, the said defendant, by his attorney aforesaid, then and there challenged said juror, on the ground that he did aid and abet the rebellion, & give assistance to the enemies of the United in said late rebellion, which challenge the said court then and there overruled & held that the said Henry Holms was a competent juror.

SECOND ERROR.—There is also error in this, to wit; that from the record aforesaid it appears that the said circuit court charged the jury

that actual possession for the period of seven years after the year A. D. 1848, would give a good title to the plaintiff and would justify the jury in finding a verdict for the plaintiff, and if the jury believes from the evidence that the plaintiff had been in the possession of this lot, holding adversely for a period of seven years, at any time between the year
5 A. D. 1848 and 1860, she would have a right to the possession of this lot in the second count mentioned at the time the suit was brought as against the defendant, who rests his defense upon possession alone, and you will find a verdict for the plaintiff. It appears from the evidence as set forth in the third exception of the bill of exceptions in the record, that the testimony did not justify such a charge.

THIRD ERROR.—There also error in this, to wit; that it appears from the record aforesaid that the said circuit court charged the jury, that if the jury believed from the evidence that the plaintiff received a deed of conveyance from Mordecai & Kerr, (of which a copy was read to them) this would be a color of title, and if you believe the grantors in said deed, Mordecai & Kerr, delivered the possession of the lot in question to the plaintiff when said deed was delivered, that would be presumptive evidence that they had possession prior to the delivery of the deed, and it further appears that there was no evidence whatever to show that Mordecai & Kerr ever had possession, or that their grantor ever had possession.

6 FOURTH ERROR.—There is manifest error in this, to wit; that it appears from the record that the circuit court aforesaid, instructed the jury that if they found from the evidence that the plaintiff moved away from the lot in the first count mentioned, and that other persons were found in possession when the plaintiff had an agent in the city, the presumption would be that they held possession with plaintiff's permission, and that if the jury believes that plaintiff took possession of this lot under color of title and has never abandoned it, such possession and the deed from Mordecai & Kerr to the plaintiff shows sufficient titles and right of possession to enable the plaintiff to recover against the defendant, who relies upon possession alone.

FIFTH ERROR.—There is also error in this, to wit: that it appears from the record that the court charged the jury that the defendant read in evidence the copy of the deed from Memminger & Ravenel to Mordecai & Kerr for the purpose of showing that the estate was conveyed by such deed, that such estate as Charles Edmondson had
7 in the lot in question are still outstanding, and that the court charged the jury that the fact that said deed described the grantor as assignees of Charles Edmon'son, and that they sign their names only without the words "assignees of Charles Edmon'son, does not vitiate the deed. The deed was sufficient to pass all that it purports to convey.

SIXTH ERROR.—There is also error in this, that it appears from the record that the court charged the jury in effect that by the introduction of the deed to Mordecai & Kerr the defendant has admitted as true every fact contained or stated in the deed.

And the said George Burt prays that said judgment may be reversed, annulled, and held for nothing, and that he may be restored to all things which he has lost by the occasion of said judgment.

H. BISBEE, J'R,
Att'y for Plaintiff in Error.

8 In Supreme Court of the United States, of Oct. term, A. D. 1876.

GEORGE BURT
vs.
MARIA M. PANGOUD. } In error.

Personally appeared before me H. Bisbee, j'r, to me well known, who being sworn deposes and says, that he prepared a citation in the above-entitled cause in due form of law, and the practice of this court, that such citation was on the 22d day of May, A. D. 1876, duly signed by the Hon. Philip Fraser as a judge of, and at the circuit court at which said cause was tried, that at the request of this deponent, Mess'r's Baker & Baker, attorneys for the said defendant in error, accepted service of such citation and indorsed such acceptance on the back of said citation, and expressly waived a delivery of a copy thereof to them, that such acceptance was dated May 22d, 1876.

Deponent further says, that he handed said citation to the clerk of said circuit court, to be filed and made a part of the record of said cause, and that on the 27th of September, in the aforesaid, said clerk

9 who was then engaged in preparing a transcript of the record of said cause, informed deponent that after diligent search he could not find said citation, and for this reason & none other the same is not in the record.

H. BISBEE, J'R.

Subscribed & sworn to before me this 28th day of September, A. D. 1876.

R. B. ARCHIBALD,
Judge 4th Cir. Florida.

We waive all objections to the loss of citation issued in the above case in matter of writ of error.

October 10th, 1876.

J. M. & H. I. BAKER,
Atty's for Def't in Error.

10 NORTHERN DISTRICT OF FLORIDA, *ss:*

Personally appeared before me, H. Bisbee, j'r, to me well known, and being duly sworn says, that on the 22nd day of May, A. D. 1876, he went to the office of Mess'r's Fleming & Daniel, the attorneys for defendants mentioned in the foregoing citation, for the purpose of serving said citation upon said attorneys, that said attorneys then and there accepted service and waived a delivery of a copy of said citation to them.

H. BISBEE, J'R.

Subscribed & sworn to before me this 27th day of Sept., A. D. 1876.
[SEAL.] PHILIP WALTER, *Clerk.*

11 *Summons.*

In the circuit court, 4th judicial circuit, S't John's County, of Florida.

MARIA M. PONGAUD
vs.
GEORGE BURT.

The State of Florida to the defendant above named:

You are hereby summoned to answer the complaint of Maria M. Pan-

gaud, plaintiff, which will be filed in the office of the clerk of this court, at S't Augustine, Florida (a copy of which is herewith served upon you), and to serve a copy of your answer on the undersigned at their office, in the city of Jacksonville Fla. (corner of Bay & Ocean streets), within thirty days after the service of this summons upon you, exclusive of the day of service, and if you fail to do so, the plaintiff will apply to the court for the relief demanded in the complaint, and costs of action.

Dated at Jacksonville, Aug. 5th, 1872.

J. M. & H. I. BAKER,
Plaintiff's Att'ys.

12 (Indorsed:) In the circuit court. 4th judicial court, S't John's County, Fla. Maria M. Pongaud vs. George Burt. Filed Oct. 18th, 1875. Philip Walter, clerk. Original summons filed Sept. 4th, 1872. C. D. Lincoln, clerk, by Fatio Dunham, D. C. J. M. & H. I Baker, plaintiff's att'ys.

Received this summons on the 5th day, 1872; served on this 6 day 1872, personally by leaving a true copy with the within-named defendant.

RAMON HERNANDEZ,
Sheriff S't John's County.

Fees, $120.

13 In the 4th judicial circuit court, S't John's County, Florida.

MARIA M. PANGAUD
vs.
GEORGE BURT. } Ejectment.

You will please take notice that the above-entitled cause will be pressed and brought on for trial on the first day of next term, being the 3d Tuesday in March, 1875, or as soon as the same can be heard during said term.

Very respectfully,

J. M. & H. I. BAKER,
Attorneys for Plaintiff.

To GEORGE BURT or W. HOWELL ROBINSON,
Attorney for Def'd't.

MARCH 4TH, 1875.

(Indorsed:) Maria M. Pangaud vs. George Burt. Notice of trial filed Oct. 18, 1875. Philip Walter, clerk. Service accepted March 6th, 1875. W. Howell Robinson, att'y for def't. Filed March 19th, 1875. J. D. Stanbury, C. C. C., by B. F. Oliver, D. C. J. M. & H. I. Baker, atty's for pl'ff.

14 In the circuit court, 4th judicial circuit, S't John's County, Florida.

MARIA M. PANGAUD
vs.
GEORGE BURT. } Ejectment.

The plaintiff in this action complains and alleges:

I. That on the day of , 18 , the plaintiff was lawfully possessed, as owner in fee simple, of the following-described premises lying in said county, to wit:

Block No. 4, bounded north by lot of V. Sanchez, east by Munne street, south by Treasury street, west by Charlotte street; also block No. 46, bounded north by lots of Burt & Peck, south by Bridge street, east by lots of Myers & Weems, and west by lots of Burt & Peck.

II. That the plaintiff being so possessed thereof, the defendant afterwards, on or about the twenty-first day of December, 1863, entered into said premises and ousted the plaintiff, and that he unlawfully withholds from the plaintiff the possession thereof to her damage of five hundred dollars.

III. That the value of the use and occupation of said premises since said 21 day of December, 1863, and while the plaintiff has been excluded therefrom by the defendant, is five thousand dollars.

Wherefore said plaintiff demands judgement against the defendant for the recovery of the possession of the said premises, and five thousand five hundred dollars damages for withholding possession, and for use and occupation of said premises by said defendant since the exclusion of said plaintiff therefrom as aforesaid, together with costs of action.

J. M. & H. I. BAKER,
Pl'ff's Attorneys.

(Indorsed:) In the circuit court, 4th judicial circuit, S't John's County, Fla. Maria M. Pangaud vs. George Burt. Filed Oct. 18th, 1875. Philip Walter, clerk. Complaint filed Sept. 4th, 1872. C. D. Lincoln, clerk, by Fatio Dunham, D. C. J. M. & H. I. Baker, pl'ff's attorney.

Complaint amended.

In the circuit court, 4th judicial circuit, S't John's County, Florida.

MARIA M. PANGAUD
vs.
GEORGE BURT.

I. The plaintiff in this action complains and alleges that she is siezed in fee of the following-described premises, lying in said county, to wit: Block number four (4), bounded north by lot of V. Sanchez, east by Manne street, south by Treasury street, west by Charlotte street; also, block No. 46, bounded north by lot of Burt & Peck, south by Bridge street, east by lots of Myers & Weems, and west by lots of Burt & Peck.

II. That the defendant is in possession thereof and withholds the same from her.

Therefore the defendant demands judgement—

1. For the possession of said premises.

2. For the sum of five thousand dollars, the plaintiff's damages, by the withholding the same, and for *and for* the use and occupation of said premises by the defendant since the exclusion of the plaintiff therefrom, together with costs of action.

J. M. & H. I. BAKER.
Plaintiff's Attorneys.

(Indorsed:) In the circuit court, 4th judicial circuit, S't John's County, Florida. Maria M. Pangaud vs. George Burt. Filed Sept. 6, 1872. Cha's D. Lincoln, cl'k. Complaint amended by Fatio Dunham, D. C. Filed Oct. 18, 1875. Philip Walter, clerk. J. M. & H. I. Baker, plaintiff 's att'ys.

18 In the United States circuit court, 5th judicial circuit, northern district of Florida.

Maria M. Panjaud, by her attorneys, J. M. & H. I. Baker, complains of George Burt, defendant, who has been summoned to answer herein an action of ejectment, for that whereas the defendant is in possession of a certain tract or parcel of land situate, lying, and being in the city of S't Augustine, in the county of S't John's, State of Florida, and known and described as follows, to wit: Bounded on the west by Charlotte street; on the north by land lately owned by the estate of John Forbes, deceased; to the east, on Bay, and on the south by an alley, being the same lot or tract of land more recently known and described in said city of S't Augustine as block number (4) four, bounded north by lot of V. Sanchez, east by Marion street, south by Treasury street, and west by Charlotte street, containing about one-half of an acre, to which said plaintiff claims title, and the defendant has received
19 the profits of said land since the 1st day of January, A. D. 1864, and refuses to deliver possession of said land to the said plaintiff, or to pay her the profits thereof.

For that whereas the defendant is in possession of a certain other tract or parcel of land, situate, lying, and being in said city of S't Augustine, county of S't John's, and known and described as follows, to wit: Block number forty-six, (46), bounded north by lot of Burt & Peck; south by Bridge street; east by lots of Myers & Weems, and west by lots of Burt & Peck, containing about three-quarters of an acre, to which said plaintiff claims title, and the defendant has received the profits of said land since the first day of January, A. D. 1864, of the yearly value of fifty dollars, and refuses to deliver the possession of said land, or to pay her the profits thereof.

I. M. & H. I. BAKER.
Attorneys for Plaintiff.

(Indorsed:) M. M. Panjaud vs. George Burt. Declaration filed Dec. 22, 1875. P. Walter, clerk. I. M. & H. I. Baker, attorneys for pl'ff.

20 *Plea.*

In circuit court of the United States, northern dist. of Florida.

MARIA M. PANGAUD
vs.
GEORGE BURT.

And now comes the defendant by his attorney, H. Bisbee, j'r, and says that he is not guilty of the said several trespasses and grievances in the plainsiff's declaration mentioned, nor any of them, and of this defendant puts himself upon the country.

H. BISBEE, J'R,
Defendant's Attorney.

Personally appeared before me George Burt, who, being sworn, deposes and says that the foregoing plea is true in substance and in fact.

GEO. BURT.

Subscribed and sworn to before me this 22nd day of December, A. D. 1875. PHILIP WALTER, *Clerk.*

(Indorsed:) In circuit court United States. Maria M. Panguad vs. George Burt. Plea of "not guilty." Filed Dec. 22, 1875. P. Walter, clerk. H. Bisbee, j'r, def't's attorney.

21 *Amended answer.*

In the circuit court 4th judicial circuit, State of Florida, county of S't Johns.

MARIA M. PANGUAD
vs.
GEORGE BURT.

The defendant, George Burt, by his attorney, W. Howell Robinson, answering the complaint herein, alleges that the plaintiff, at the commencement of this action, was not seized in fee of the premises described in the complaint, nor entitled to the possession thereof.

W. HOWELL ROBINSON,
Attorney for Defendant.

S'T AUGUSTINE, *October* 29, 1872.

STATE OF FLORIDA,
County of S't Johns, ss:

George Burt, the defendant above named, being duly sworn, says that the foregoing answer is true to his own knowledge.

GEO. BURT.

22 Subscribed and sworn to before me this 4th day of Nov'r, A. D. 1872.

CHA'S D. LINCOLN, *Clerk.*
By FATIO DUNBAR, *D. C.*

(Indorsed:) 4th circuit court S't John's County. Maria M. Panguad vs. George Burt. Amended answer. Original. Filed 8th Dec., 1874. J. D. Stanbury, C. C. C. By B. L. Oliverio, D. C. Filed Oct. 18th, 1875. Philip Walter, clerk. W. Howell Robinson, att'y for d'f't, S't Augustine.

23 *Demurrer.*

In the circuit court, 4th judicial circuit, S't John's County, Florida.

MARIA M. PANGAUD
vs.
GEORGE BURT.

The plaintiff, by her attorney, comes and demurres to the second defense continued in the answer of the defendant herein, and says that the same does not constitute a defense to this action, in that it does not state that the said defendant held and possessed the said premises described in said complaint adversely to the plaintiff's tittles for seven years next before the commencement of this action, exclusive of the constitutional provisions contained sec. (3) of article (15) of the constitution of Florida.

That said plaintiff further demurs to said second defense in said an-

swer of said defendant, in that there has been no statute of limitation in the State of Florida running prior to the act of February, the 27th, A. D. 1872.

24 I. M. & H. I. BAKER,
Plaintiff's Att'ys.

STATE OF FLORIDA,
Duval County:

We herein certify that the above demurrer is in our opinion well founded, and make oath that the same is not interposed for the purpose of delay.

Sworn to & subscribed before me this 15th day of Oct., A. D. 1872.
[SEAL.] W. W. DOUGLAS,
Notary Public.

(Indorsed:) In the circuit court, 4th judicial, S't John's County, Fla. Maria M. Pangaud vs. George Burt. Filed 21st Oct., 1872. C. D. Lincoln, cl'k. By F. Dunham, deputy clerk. Demurrer. Original. Filed Oct. 18th, 1875. Philip Walter, clerk. I. M. & H. I. Baker, plaintiff's att'ys.

25 To the honorable the judge of the United States circuit court for the 5th circuit and northern district of Florida:

The petition of George Burt, a citizen of the State of Florida, and resident at S't Augustine, in the northern district thereof, respectfully represents to your honor that he is defendant in an action pending in the circuit court of the 4th judicial circuit of the State of Florida for the County of S't John's, commenced against him by Maria M. Pangaud, a citizen of the State of South Carolina, for the recovery of the possession of certain lots or parcels of land situated in the said city of S't Augustine, and for damages in the sum of five thousand dollars, for the use and occupation of the same; which said lots or parcels of land are held by petition through purchase from the United States Government, by virtue of proceedings under an act entitled "An act for the collection of direct taxes in the insurrectionary districts within the United States, and for other purposes," approved June 7th, 1862,
26 or under acts sup'lementary thereto, or upon the same subject-matter; and that petitioner was served with process in said suit in the said northern district of Florida.

Wherefore petitioner respectfully begs that the said suit or action may be removed from the said court of the 4th judiclal circuit of Florida unto the United States circuit court for the 5th circuit and northern district of Florida, and that the record of said suit may be filed in the office of the said United States circuit court, and the cause entered upon the docket thereof, and thereafter proceeded in as a cause originally commenced in said court.

GEO. BURT.

STATE OF FLORIDA,
County of S't John's:

George Burt, the above petitioner, being duly sworn, deposes that the matters and things set forth in the foregoing petition are true in substance and fact.

GEO. BURT.

Before me this 1st day of December, 1874.
DAVID L. DUNHAM,
Justice of the Peace.

27 Subscribed & sworn before me this day of , A. D. 1874.

I, W. Howell Robinson, a counsellor of the U. S. circuit court, northern district of Florida, hereby certify that as counsellor for the petitioner I have examined the proceedings against him, and have carefully inquired into all the matters set forth in the petition, and that I believe the same to be true.

W. HOWELL ROBINSON,
Counsellor for Petitioner.

S'T AUGUSTINE, *December 2d*, 1874.

(Indorsed:) U. S. circuit court, 5th circuit, northern district of Florida. Maria M. Pangaud vs. George Burt. Petition of defendant for removal to U. S. circuit court. Filed this 9th day of Dec., 1874. Philip Walter, clerk. W. Howell Robinson, att'y for d'f't, S't Augustine.

28 UNITED STATES OF AMERICA:

The President of the United States to the clerk of the circuit court, 4th judicial circuit, S't John's County, greeting:

For certain reasons and causes set forth in a petition to the judge of the circuit court of the United States for the northern district of Florida, in the fifth judicial circuit, and now on file in the clerk's office of said court at Jacksonville, in said northern district of Florida, it is hereby commanded that you or one of you, under the seal of your said court, do send & certify, enclosed together with this writ, the record and proceedings in a certain cause pending in your court wherein Maria M. Pajaud is plaintiff and George Burt defendant, with all things touching the same, as fully and wholly as they are before you now, to the clerk's office of the said circuit court of the United States, at Jacksonville, in the northern district of Florida; and you are further commanded, from and after the date of this writ, to stay all further proceedings in said cause between the said Maria M. Pajaud,
29 plaintiff, and George Burt, defendant, and to discontinue the same in your said court.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Jacksonville, in the northern district of Florida, this ninth day of December, A. D. 1874, and of the Independence of the United States the ninety-ninth year.

[SEAL.] PHILIP WALTER, *Clerk.*

(Indorsed:) U. S. circuit court, 5th judicial circuit, northern district of Florida. Maria M. Pajaud vs. George Burt. Petition of def't. Filed Dec. 9. Certiorari. Issued Dec. 9, 1874.

Rec'd the within writ from Philip Walter, clerk of the northern district of Florida, by W. H. Robinson, att'y for defendant, this 18th Sept., 1875.

J. D. STANBURY, *C. C. C. J.*,
By B. F. OLIVERIO, *D. C.*

Returned Oct. 18, 1875.

PHILIP WALTER, *Clerk.*

30 STATE OF FLORIDA,
S't John's County:

I, J. D. Stanbury, clerk of the circuit court, 4th judicial circuit of Fla., in and for S't John's County, do hereby certify that the enclosed papers, numbered from 1 to 12, are all the papers on file in my office in the case entitled "Maria M. Pangaud vs. George Burt."

In witness whereof I have 'ereunto set my hand and seal of office, at S't Augustine, this 11th day of October, A. D. 1875.

[L. S.] J. D. STANBURY, *C. C. C.*,
By B. F. OLIVERIO, *D. C.*

(Indorsed:) Filed Oct. 18th, 1875. Philip Walter, clerk.

31 Circuit court, 5th judicial circuit, northern dist. Fla.

WEDNESDAY MORNING, *Dec.* 22, '75.

Court met pursuant to adjournment. Present, the Hon. Philip Fraser, judge.

Court was opened in due form by the crier.

MARIA M. PANJAUD
vs.
GEORGE BURT. } Ejectment.

This cause came on to be heard this day. Defendant's counsel asked Henry E. Holmes, a juror called in the cause, whether he had participated in the late rebellion. M'r Holmes refused to answer the question. Court ruled that he was not required to answer the question; to which ruling defendant's counsel excepts, after which the following jurors were empanneled and sworn to try the issue joined:

Frederick Luders, Ja's Green, Rob't Moorehead, Adam Mattox, Otis L. Keen, Edmund Green, Edward Hogan, Tho's S. Swaim, Frank A. Poullen, Cha's B. Husted, Rich'd Kinlock, Tho's W. Raby.

32 This cause not being concluded at the hour of adjournment, it was ordered that this court do now adjourn until to-morrow morning at ten o'clock.

THURSDAY MORNING, *Dec.* 23*d*, 1875.

Court met pursuant to adjournment. Present, Hon. Philip Fraser, judge.

Court was opened in due form by the crier.

MARIA M. PANJAUD
vs.
GEORGE BURT. } Ejectment.

This cause came on again to be heard this day, and the jury being called answered to their names as follows:

Frederick Luders, Ja's Green, Rob't Moorehead, Adam Mattox, Otis L. Keen, Edmund Green, Edward Hogan, Tho's S. Swaim, Frank N. Poullen, Cha's B. Husted, Richmond Kinlock, Tho's W. Raby.

The argument of counsel being concluded, the cause was submitted to the jury under the charge of the court, to which charge defendant's counsel except.

The jury having retired for deliberation, returned the following verdict:

33 We, the jury, find for plaintiff, and that the defendant is guilty on both counts of the trespass and ejectment in the declaration.

* * * * * * *

Ordered, that this court do now adjourn until to morrow morning at ten o,clock.

34 December term.

MARIA M. PANGEAUD
vs.
GEORGE BURT. } Ejectment.

DECEMBER 22, 1875.

And now, on this twenty-second day of December, A. D. one thousand eight hundred and seventy-five, comes the plaintiff, by her attorney, and it appearing to the court that the defendant had filed his pleas to said action, and issue being joined, whereupon came a jury to try the issue, to wit: Frederick Leuders, Jo's Green, Rob't Moorehead, Adam Mattox, Otis L. Keen, Edmund Green, Edward Hogan, Tho's S. Swain, Frank A. Poullen, Cha's B. Husted, Richmond Kinlock, and Tho's W. Roby, who were duly sworn to try the issues joined, who, upon their oath, do say, "We, the jury, find for the plaintiff, and that the defendant is guilty on both counts of the trespass and ejectment, as alleged in the declaration."

Now, therefore, it is considered and ordered by the court that the said plaintiff, Maria M. Pangeaud, do have and recover of and from the said defendant, George Burt, according to the finding of the jury,
35 the possession of the premises mentioned in the declaration filed in this action, with all the tenements thereunto belonging, besides forty-five dollars and fifty cents, as costs of this action.

And it is further considered and ordered by the court that the writ of this court do issue, directed to the marshall of the United States for the northern district of Florida, to cause the said Maria Panjaud to have possession of the said premises according to the force, form, and effect of their said recovery.

December 22d, 1875.

36 In the circuit court of the United States, northern district of Florida, December term, A. D. 1875.

Be it remembered that at a term of the circuit court of the United States for the northern district of Florida, began and held at Jacksonville on the sixth day of December, A. D. one thousand eight hundred and seventy-five, a cause, wherein Maria M. Pangoud was plaintiff and George Burt was defendant, come on to be heard before said court, his honor Judge Philip Fraser presiding, Judge Woods and Justice Bradley absent, at which day come the said parties by their respective attorneys;

And the attorney for the defendant, upon the jurors being called to the bar of the court to be sworn, moved the court to have Henry Holmes, one of said jurors, sworn to true answers make to such questions as might be put to him touching his qualifications as a juror, for the purpose of inquiring of the said Henry Holmes whether or not he had aided or abetted the late rebellion against the United States of
37 America, and therefore liable to be challenged as a juror under the provisions of section eight hundred and twenty of the Revised Statutes of the United States.

And the said Henry Holmes, being then and there sworn to true answer make touching his qualifications as a juror to said court, his honor Judge Philip Fraser, presiding, decided and stated to the said Henry Holmes that it was not obligatory upon him to answer any questions as

to whether or not he had aided the said late rebellion, but that it was optional with him to answer such questions.

To which decision of said court the defendant, by his attorney, then and there excepted, and this constitutes defendant's first exception in this case.

SECOND EXCEPTION.—The attorney for the defendant then asked the juror, Henry Holmes, whether or not he aided and abetted the late rebellion against the United States or gave assistance to the enemies of the said United States, which question the said Henry Holmes then and there declined to answer, whereupon defendant's attorney objects to the said juror, and challenged him on the ground that he did give aid
38 and assistance to, and aided and abetted, the late rebellion against the United States, which objection and challenge the said court overruled.

To which decision of the court, overruling said objections and challenge, the defendant then and there excepted, and this constitutes defendant's second exception.

And thereupon the issues, in manner aforesaid joined between the parties aforesaid, came on to be tried, and the jurors of the jury aforesaid, whereof mention is within made, being called, likewise came & were sworn to try the said issues, and thereupon the plaintiff, to maintain the issues on his part, produced and was allowed by the court read in evidence a certified copy of a deed for the purpose of showing a title and of connecting his possessions with such title, which deed is dated April 30, 1845, and is in the words and figures following, to wit:

TERRITORY OF FLORIDA:

This indenture, made this thirtieth day of April, in the year of
39 our Lord one thousand eight hundred and forty-five, between Moses C. Mordecai and Thomas J. Kerr, of the city of Charleston, South Carolina, of the first part, and Maria M. Ponjaud, wife of Augustus Ponjaud, of the city of S't Augustine, East Florida, of the second part, witnesseth:

That the said Moses C. Mordecai and Thomas J. Kerr, for and in consideration of the sum of four hundred and fifty dollars, to them in hand paid at and before the ensealing and delivery of these presents by the said Maria M. Ponjaud, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and conveyed, and by these presents do grant, bargain, sell, release, and convey unto the said Maria M. Ponjaud all that certain messuage, lot, or piece of land situate, lying, and being in the city of S't Augustine, in the Territory aforesaid, butting and bounding to the west on Charlotte street, to the north on land now or lately of the estate of John Forbes, deceased, to the east on the bay, & to the south on an alley, together with all and singular the rights, members, and hereditaments whatsoever to the said prem-
40 ises in anywise appertaining, and also all the right, title, claim, interest, and demand whatsoever, as well in law as in equity, of the said Thomas J. Kerr & Moses C. Mordecai, as received by them from Daniel Ravenel and C. G. Memminger, assignees of Charles Edmonston, it being clearly understood and agreed between the said parties that the said Thomas J. Kerr and Moses C. Mordecai sell and transfer the aforesaid premises unto the said Maria M. Panjaud, as received by them from the said assignees of Charles Edmondston, and subject to such claim as may exist under a mortgage of Paul F. Sanchez for three hundred and twenty dollars, to have and to hold the said

premises, unto the said Maria M. Ponjaud, her heirs, executors & assigns, forever.

And the said party of the first part, their heirs, executors, and administrators, do hereby covenant and agree to and with the said party of the second part, her heirs, executors, and administrators, that the aforegranted premises are free from all incumbrance by or through or under them or either of them; that is to say, that neither or either
41 of them have in any way encumbered the same, and that the said premises are in no way liable for the debts of them or either of them, & that they, their heirs, executors, and administrators, will warrant and forever defend the same, and every part thereof, against all persons lawfully claiming by, through, or under them or either of them, and against all liabilities and debts of them or either of them.

In witness whereof the parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signed) M. C. MORDECAI. [L. S.]
(Signed) THOMAS J. KERR. [L. S.]

Signed, sealed, & delivered in presence of—
(Signed) Is. Eger Hortz.
(Signed) Sam'l Ja's Berger.

State of South Carolina:

Personally appeared Isaac Eger Hertz, & being duly sworn, made oath and said that he was present and saw the before-named Moses C. Mordecai and Thomas J. Kerr sign, seal, and, as their act and
42 deed, deliver the foregoing instrument of writing, and that deponent, with Samuel James Berger, witnessed the execution thereof.

(Signed) ISAAC EGER HERTZ.

Sworn to before me at the city of Charleston, in the State aforesaid, this thirtieth April, A. D. 1845.

Witness my hand and seal.

[L. S.] (Signed) WILLIAM B. HERIOT,
Commissioner appointed by his excellency the Governor of Florida to take affidavits and acknowledgments of deeds in South Carolina.

State of South Carolina,
City of Charleston:

I, William B. Heriot, commissioner appointed by his excellency the governor to take affidavits and acknowledgments of deeds in South Carolina, to be used in Florida, do hereby certify unto all whom it may concern, that Isabel R. Mordecai, wife of the within-named Moses C. Mordecai, did this day appear before me, and upon being privately and separately examined by me, did declare that she does fully, vol-
43 untarily, and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto the within-named Maria M. Pangaud, her heirs and assigns, all her interest and estate, and also all her right and claim of dower of, in, or to all and singular the premises within mentioned and released.

(Signed) J. R. MORDECAI.

Given under my hand and seal this 30th April, anno Domini 1875.

[L. S.] WILLIAM B. HERIOT,
Florida Comm'r of Deeds.

STATE OF SOUTH CAROLINA:

I, William B. Heriot, commissioner appointed by his excellency the governor of Florida to take affidavits and acknowledgments of deeds in South Carolina, to be used in Florida aforesaid, do hereby certify unto all whom it may concern, that Elizabeth C. Kerr, the wife of the within-named Thomas J. Kerr, did this day appear before me, and upon being privately and seperately examined by me did declare that she
44 does freely, voluntarily, and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto the within-named Maria M. Pangaud, her heirs and assigns, all her interest and estate, and also all her right and claim of dower of, in, and to all and singular the premises within named and released.

(Signed) ELIZABETH C. KERR.

Given under my hand and seal at Charleston, in the State aforesaid, this 30th April, A. D. 1845.

(Signed) WILLIAM B. HERIOT,
Florida Com. of Deeds.

(Indorsed:) M. C. Mordecai & Thomas J. Kerr, to Maria M. Pangaud. State of Florida, county of S't John. Rec'd the 24th of July, 1845. Recorded the 24th July, 1845, in Book P, pages 52 & 53 of records. Deeds. Signed P. B. Dumas, clerk of S't John's County.

Offered by plaintiffs, received in evidence and filed Dec. 22, 1875.
P. WALTER, *Clerk.*

45 And the said plaintiff, by his attorney, further to prove the issue in his behalf, then and there produced as a witness one Alfred D. Rogero, who, being duly sworn, testified substantially as follows, to wit:

I know the plaintiff in this suit. I reside in S't Augustine; have resided there many years—all my life, and am sixty-four years of age. Know the location of the land described in the first count of the declaration. M'r Burt, the defendant, has a store on it. I can't tell who was in possession of it before the late war. M'r Matteo Solona was agent for the plaintiff, and returned this property for taxes, and paid the taxes on it for the plaintiff from 1857 to 1860. I was tax-assessor and collector. This is how I know it.

I leased other property from Solona, the agent of the plaintiff. Long prior to the late war there were two houses on this land. These houses were occupied. I don't know who occupied them. I think a M'r's Lewis occupied one house about the year A. D. 1845. It may have been earlier or later.

M'r's Pangaud has not resided in S't Augustine for about thirty
46 years. It has been a very long time. She went to Cuba, and then afterwards went to Charleston, South Carolina.

In 1842, I leased the lot of land described in the second count of the plaintiff's declaration from M'r Solona, as the plaintiff's agent. M'r Solona acted as the agent for the plaintiff. M'r Solona claimed to be in possession as agent for all the plaintiff's property after plaintiff left S't Augustine. M'r Solona is now dead. No one else returned this property for taxation that I am aware of. M'r Pangaud, the husband of plaintiff, has been dead for twenty years.

Since the war I have seen D'r Shine living on the lot on Charlotte

street, and the defendant occupied one or two rooms down stairs. Defendant occupied a store on the lot.

M'r Solona claimed to be in possession as agent of all the property of M'r's Pangaud after she left S't Augustine. Was a family counselor. He is now dead. I don't recollect the plaintiff as residing in S't Augustine since 1842. She has been in S't Augustine since then. I
47 don't know who occupied these premises between the year 1845 and 1860. Saw persons there, but don't remember who they were. If she had resided there since 1845, I should have known it. I cannot give the names of any persons who have lived on the property since 1845. The defendant keeps a store on the lot. Have seen no one else but M'r Burt in possession of the lot on Charlotte street since the war. I know M'r Burt personally. In 1863 he took possession. He returns it for taxes in 1866 & 1867. M'r Solona paid taxes for plaintiff from 1857 to 1861, and not before, as I am aware.

Direct examination resumed:

I am positive of the date of 1842 when I leased the property described in second count of declaration, because it was in that year that I went out of the military service. It has been about thirty years since plaintiff left S't Augustine.

The plaintiff then produced as a witness in his behalf one F. P. Ferrara, who, being duly sworn, testified substantially as follows, to wit:

48 Have lived in S't Augustine all my life till about five years ago. I am fifty-eight years old. I know the property in the first count described. The defendant occupies the lot. He has a store on it. I know M'r's Pangaud occupied the property from about 1845 to 1847, and then moved away and built a house at another place called the point, where the plaintiff had some cows and sold milk. I was tax-assessor about the year 1845 to 1847. There were two houses in this lot on Charlotte street. This is the same property now occupied by the defendant. He was in possession of it five years ago, when I left S't Augustine. It has been a great many years since the plaintiff left S't Augustine. It is between twenty and thirty years. I know M'r Solona. Don't know that he was agent, only that he said so.

Cross-examined:

I am quite positive as to the year 1845 to 1847 during which plaintiff and her husband occupied this lot, for the reason that I was married in 1844, and I recollect they occupied it soon after I was married. I
49 don't know why they moved to the point and built a small house and lived there. It may be twenty-three, twenty-five, twenty-nine or thirty years since plaintiff left S't Augustine. I cannot state positively. M'r Burt built a store on the lot. There has been no one in possession of this lot, except the defendant, since 1863, to my knowledge.

Redirect examination:

The point where the plaintiff moved city of Augustine contained twenty or thirty acres. In Sept., 1872, the defendant was in possession of this property described in the first count of the declaration.

The plaintiff here rested her case.

The defendant, to sustain the issue on his part, produced and read in evidence a deed which is in the words and figures following, to wit:

Charles Edmonston's assignees to M. E. Mordecai & T. I. Kerr. Lots in the city of S't Augustine, Territory of Florida.

50 This indenture made the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and forty-four, between Daniel Ravenel & C. G. Munninger, assignees and agents of the creditors of Charles Edmonstons, of the first part, and M. C. Mordecai & T. I. Kerr, of the second part.

Whereas Charles Edmonston, of Charleston, in the State of South Carolina, did, on the 3d day of June, A. D. one thousand eight hundred and thirty-seven, assign and convey to Daniel Ravenel and C. G. Munninger the premises hereinafter described to pay and discharge the debts of the said Charles Edmonston, and the said Daniel Ravenel and C. G. Munninger have also been duly appointed agents of the creditors of the said Charles; and whereas in the execution of the said trust the said assignees did put up the said premises, and all their interest and estate therein, at public sale in Charleston, and at such sale M. C. Mordecai and T. I. Kerr did become the purchaser thereof at the sum of seven hundred and seventy-seven dollars. Now this indenture witnesseth:

51 That the said Daniel Ravenel and C. G. Munninger, assigns as aforesaid, for and in consideration of the sum of seven hundred and seventy-seven dollars, to them in hand paid at or before the sealing and delivery of these presents by the said M. C. Mordecai & T. I. Kerr, the receipt whereof is hereby acknowledged, and the said M. C. Mordecai and T. I. Kerr, their heirs, executors, and administrators forever released, and discharged from the same, by these presents have granted, bargained, sold, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, release, convey, and confirm unto the said M. C. Mordecai and T. I. Kerr, as tenants in common, their heirs, and assigns forever, all that certain messuage, lot, or parcel of land situate, lying, and being in the city of S't Augustine, in the Territory aforesaid, and bounded on the west by Charlotte street; north, by land now or lately of the estate of John Forbes, deceased; on the east by the bay, and on the south by an alley.

Also all that lot or parcel of land situate, lying, and being in the said city of S't Augustine, in the street known by the name of the
52 Burnt Barracks, containing in front, north and south, thirty-two Spanish varas, and in depth, east and west, fifty-eight Spanish varas; bounded east by said street, and on the north by a lot now or late of Lewis Fuentes; on the south by a lot now or late of A. Ponjaud, and on the west by a new street.

Also all that other lot measuring in front eighteen varas north and south, and in depth, east and west, fifty-three varas, which runs to the place where there is to be a new street, and adjoining on the south a lot, in the said city of S't Augustine, late of Augustus Ponjaud, next below described, bounded on the north by a lot of the estate of Martinez; on the east by said street, and west by the new street.

Also that lot situated in the said city of S't Augustine, in the street of the old Burnt Barracks, which measures in front, north and south, fourteen varas, and in depth, east and west, fifty-three varas, bounded on the east by the said street; on the south by lots now or late of Maria Cantal, and on the west by a street to be opened.

Also all that lot of land situate in the city of S't Augustine, on
53 New street, near the Burnt Barracks, containing one hundred and twenty-five Spanish yards in front, and twenty-seven yards,

more or less, in depth, bounded on the north by a lot of Ines Genevieve; on the east by New street, and on the west by the marsh.

Also all that certain lot, piece, or parcel of land, with a stone house built thereon, situate in the city of S't Augustine, in Barracks Ward, bounded on the east by the street leading from S't Francis Barracks to the powder magazine, on which street it fronts, and measuring on said front ninety Spanish varas; on the south by lands granted to Fernando Falany, measuring on this line one hundred and thirty-five Spanish varas; on the west by Bridge Creek, and measuring on this line one hundred and thirteen Spanish varas; on the north by land formerly owned by D'r Calitina Cantealy, and measuring on this line one hundred and fifty Spanish varas, which said lot is divided by the street leading in a direct line from Fort Marion to the said powder magazine, and is called
54 Charlotte street, it being understood that twelve varas have been separated from the north part of the lot running from Charlotte street to Bridge Creek.

Also all the lot of land situated in the said city of S't Augustine, bounded on the east by New street, on the west by Maria Sanchez Creek, on the south by a lot late of Charles Edmonston, on the north by a lot now or late of Francis I. Avic, measuring in front, north & south, twelve and one-half yards, and in depth to the said Maria Sanchez Creek, east & west.

Together with all and singular the appurtenances, privileges, and advantages and heriditaments whatsoever unto the said premises in anywise appertaining or belonging; and the reversions, remainders, rents, issues, and profits thereof; and also all the estate, right, title, and interest, property, claim, and demand whatsoever as well in law as in equity of the said Daniel Ravenel and E. G. Memminger, assignees as aforesaid, of, in, or to the same and every part and parcel thereof with the appurtenances.

55 To have and to hold the said premises with the appurtenances unto the said M. C. Mordecai & T. I. Kerr, as tenants in common, their heirs and assigns forever.

In witness whereof the said parties to these presents have set their hands and seals the day and year first above written hereunto.

DANIEL RAVENEL. [L. S.]
C. G. MUNNINGER. [L. S.]

Signed, sealed, & delivered in presence of—
HENRY MORRIS.
JNO. CART, J'R.

STATE OF SOUTH CAROLINA,
City of Charleston:

Be it known that on this seventh day of June, one thousand eight hundred and forty-seven, and in the seventy-first year of the Independence of the United States of America, before me, William B. Heriot, commissioner, appointed by his excellency the governor of Florida to take affidavits and acknowledgments of deeds executed in South Carolina, to be used in Florida, personally came and appeared Henry Morris, above named, and being duly sworn, maketh oath and saith that
56 he was present and saw the aforesaid Daniel Ravenel and C. G. Munninger sign, seal, and, as their act and deed, deliver the above and before written deed, and that he, deponent, with John Cart, j'r, signed their names as witnesses to the execution thereof.

HENRY MORRIS.

Given under my hand and seal the day and year last above written.
[L. S.] WILLIAM B. HERIOT,
Commissioner of Deeds for Florida.

A true record entered the twenty-fourth day of June, A. D. eighteen hundred and forty-seven.

P. B. DUMAS,
Clerk of C. C. of S't John's County

STATE OF FLORIDA,
S't John's County:

I, J. D. Stanbury, clerk of the circuit court, 4th judicial circuit of Florida, in and for S't John's County do hereby certify that the foregoing instrument of writing is a true, correct, & compared copy of a deed on record in my office in book P, pages 125 & 126.

57 In testimony whereof I have hereunto set my hand and affixed my official seal of office at S't Augustine, Fl'a, this 13th day of December, A. D. 1875.

J. D. STANBURY,
Clerk Circuit Court, S't John's County, Fl'a.

(Indorsed:) Assignees of Charles Edmonston to Mordecai & Kerr, 27th day of January, 1844. Offered by defendant. Received in evidence & filed this 22nd day of December, 1875. P. Walter, clerk.

58 The defendant closed his case and the *and the* plaintiff having no further evidence to offer closed the case on her part, and the parties having concluded and submitted this testimony and the several matters aforesaid, the said judge did then and there give his opinion and deliver his charge orally to the jury.

THIRD EXCEPTION.—The testimony on the part of the plaintiff tended to prove that in the year 1842 the witness, Alfred D. Rogero leased for a short time the lot of land described in the second count of the declaration of M'r Matteo Solona as the plaintiff's agent, and that from the year A. D. 1857 to 1860 M'r Solona, as the agent of the plaintiff, returns to the tax assessor for assessment and paid taxes on this lot of land, and upon this branch of the case, the court charged the jury, substantially as follows, to wit:

The plaintiff has not introduced any deed or proper title to the land described in the second count of the declaration. She claims the
59 right to recover this lot of land upon possessary title alone and the court instructs you that actual possession for the period of seven years after the year A. D. 1848, would give a good title to the plaintiff and would justify you in finding a verdict for the plaintiff.

If M'r Rogero rented this property and held it as tenant of the plaintiff, the presumption would be that the plaintiffs were in possession.

If the jury believes from the evidence that the Statute of Limitations which is seven years in this State and has been since 1848, had run in favor of the plaintiff, that is to say, that the plaintiff had been in the possession of this lot, holding adversely for a period of seven years at any time between the year A. D. 1848 and 1860 she would have a right to the possession at the time the suit was brought, as against the defendants who rest their defence upon possession alone, and you will find a verdict for the plaintiff.

To which decision and charge of the court, the defendant, by
60 his attorney, then and there accepted (?) before the jury retired to consider of their verdict.

FOURTH EXCEPTION. The plaintiff offered in evidence a certified copy of a deed from Mordecai & Kerr to the plaintiff, to the reading of which defendant objected, and the court decided that plaintiff could read said deed in evidence for the purpose of showing color of title and of connecting his possession therewith if he could. Said deed was allowed to be read in evidence.

Plaintiff also produced as witnesses on his behalf, F. P. Ferrara and Alfred D. Rogero, whose testimony tended to prove that plaintiff was in possession of the lot described in the first count of the declaration, from 1845 to 1847, or for two years about that time, and then moved off from said lot & built and occupied a house at a place called The Point, where the plaintiff kept some cows, and that after 1847, this lot or the house thereon, was occupied, but by whom, the testimony did not prove.

61 The testimony of the witness Rogero also tended to prove that M'r Matteo Solonoa was the agent of the plaintiff, and returned and paid taxes on the said lot from 1857 to 1860, but attorney for defendants contended that there was no evidence tending to prove that plaintiff by herself or agent paid taxes or exercised any acts of ownership over said lot from 1847 to 1857, nor that the person in possession after 1847, were the tenants of the plaintiffs' or held possession under her.

Defendants' attorney contended that there was no evidence that Mordecai & Kerr, the granters in the deed to the plaintiff ever had possession, nor that the persons through whom Mordecai & Kerr claimed to derive title, were ever in possession.

Upon this branch of the case, the court instructed and charged the jury, orally as follows, to wit:

If you believe from the evidence that the plaintiff received the deed of conveyance from Mordecai & Kerr, of which a copy has been read to you that would be a color of title, & if you believe the grant-
62 ers in said deed, Mordecai & Kerr, delivered the possession of the lot in question to the plaintiff when said deed was delivered, that would be presumptive evidence that they had possession prior to the delivery of the deed.

It does not appear that the plaintiff was ever ousted from possession. The mere moving out of possession, does not amount to abandonment, but when a party moves out of possession without any intention of returning, it amounts to an abandonment and loss of possession.

If you find that the plaintiff moved from this lot in 1847, and that other persons were afterwards found in possession when the plaintiff had an agent in the city, the presumption would be that they held possession under plaintiff's permission. And if you believe from the evidence that the plaintiff took possession of this lot under color of title, and has never abandoned it, such possession and the deed from Mordecai & Kerr to the plaintiff, shows sufficient title and right of possession to enable the plaintiff to recover against the defendant who rely
63 upon possession alone.

To which opinion and charge of the court, the defendant, by his attorney then & there excepted, and this constitutes defendant's fourth exception.

FIFTH EXCEPTION. The defendant read in evidence a copy of the deed from Memminger & Ravenel to Mordecai & Kerr, for the purpose of showing that all that the plaintiff took under her deed from Mordecai & Kerr if anything at all, was such interest as Charles Edmonston

had in the lot, andalso to show that the deed from Memminger & Ravenel to Mordecai &Kerr, did not operate to pass any title or estate whatever.

And upon this branch of the case the court charged the jury as follows, to wit:

The defendant read in evidence the copy of the deed from Memminger & Ravenel to Mordecai & Kerr, for the purpose of showing
64 that no estate was conveyed by that deed, and that such estate as Charles Edmonston had in the lot in question was still outstanding.

The court charges you that the fact that said deed describes the grantors as assignees of Charles Edmonston, and that they sign their name only without the words " assignees of Cha's Edmonston " does not vitiate the deed. The deed was sufficient to pass all that it purports to convey.

The court further charges and instructs you, that by the introduction in evidence of this deed by the defendant, the defendant has admitted as true every fact contained or stated in the deed.

To which instructions and charge of the court the defendant by his attorney then and there excepted, and this constitutes defendant's fifth exception.

The jury then retired to consider of their verdict, and returned into court a verdict of guilty against defendant upon both counts in the declaration.

65 Whereupon the court aforesaid, on the day of January, A. D. 1876, at the term aforesaid, did render judgment in favor of the said plaintiff and against the said defendant, as appears of record, and inasmuch as the said several objections and exceptions to the opinions, decisions, and charges of the court do not appear by the record of the verdict and judgment aforesaid, the said defendant did then and there propose this his bill of exceptions to the said opinions, and decisions of the said judge, and request him to sign and seal the same according to the form of the statute in such case made and provided, which is done this 10th day of May, A. D. 1876.

PHILIP FRASER, *Judge.*

65½ (Indorsed:) Filed this 10th day of May, A. D. 1876. Philip Walter, clerk.

66 Supreme Court of the United States.

Know all men by these presents that we, George Burt, as principal, and W'm J. Reyes and A. Anderson, as sureties, are held and firmly bound unto Maria M. Panjaud in the sum of two thousand dollars, to be paid to the said Maria M. Pagaud, her heirs, executors, or administrators, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 24th day of December, A. D. 1875.

Whereas the above-named George Burt hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgement rendered in the suit entitled Maria M. Panjaud vs. George Burt by the circuit court of the United States for the northern district of Florida:

Now, therefore, the conditions of this obligation is such that if the above-named George Burt shall prosecute his said writ of error to effect

67 and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall remain in full force and virtue.

GEORGE BURT. [L. S.]
W'M J. REYES. [L. S.]
ANDREW ANDERSON. [L. S.]

Sealed and delivered in presence of—
B. F. OLIVERIO.
F. J. BALLARD.

STATE OF FLORIDA,
S't John's County:

Personally appeared before me W'm J. Reyes and Andrew Anderson, two of the individuals described and named in the foregoing bond and who executed the same, and each being duly sworn separately, says that they are each worth the sum of money specified in the foregoing bond over and above their just debts, liabilities, and homestead exemptions.

In witness whereof I have hereunto set my hand and seal of office, at S't Augustine, this 28th day of December, A. D. 1875.

J. D. STANBERY, *C. C. C.*,
By B. F. OLIVERAS, *D. C.*

68 (Indorsed:) In circuit court United States. Maria M. Panjaud vs. George Burt. Appeal bond. H. Bisbee, jr., def't's att'y.

The foregoing bond is approved this 15th day of May, A. D. 1876.
PHILIP FRASER, *Judge.*

(Indorsed:) In circuit court United States. Maria M. Panjaud vs George Burt. Ejectment. Bond for writ of error. Filed May 15, 1876. Philip Walter, clerk. H. Bisbee, j'r, def't's att'y.

69 United States circuit court, 5th judicial circuit, northern district of Florida.

MARIA M. PANJAUD
vs.
GEORGE BURT. } Ejectment.

I hereby certify that the foregoing is a true and correct transcript of the record and proceedings in the above-entitled cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Jacksonville, this 5th day of October, 1876, and of the Independence of the United States the one hundred and first year.
PHILIP WALTER, *Clerk.*

(Indorsement on cover:) No. 235. George Burt, plaintiff in error, vs. Maria M. Panjaud. N. Florida C. C. U. S. Filed 14th October, 1876.

UNITED STATES SUPREME COURT.

EJECTMENT No. 235.

GEORGE BURT, *Plaintiff in Error,*

vs.

MARIA M. PONJOUD, *Defendant in Error.*

BRIEF OF H. BISBEE, JR.,

FOR PLAINTIFF IN ERROR.

R. O. POLKINHORN, PRINTER, WASHINGTON, D. C.

UNITED STATES SUPREME COURT.

EJECTMENT No. 235.

GEORGE BURT, *Plaintiff in Error*,

vs.

MARIA M. PONJOUD, *Defendant in Error.*

Brief of H. Bisbee, Jr., Attorney for Plaintiff in Error.

This is an action of ejectment, brought in the Circuit Court of St. John's County, State of Florida, to recover possession of two lots of land. The pleadings in the State court were according to a code practice, then but not now in force. The case was removed to the Federal court, where the pleadings were reformed, and the case was tried on such reformed pleadings.

Plaintiff in the court below, defendant in error here, claims title and the right of possession to the lot in the first count of the declaration mentioned, under certain deeds of conveyance, which were put in evidence; and she claims title and possession to the lot in the second count of the declaration described, by virtue of an *asserted prior possession.*

She did not introduce any paper, title, or evidence of title, to the lot in the second count mentioned.

The defendant introduced no evidence of title to either of the lots of land in question, but relied on failure of proof on the part of the plaintiff.

A judgment was rendered against the plaintiff in error, who prosecuted this writ of error to reverse said judgment.

The only questions arising upon the merits of the case, are, as to whether or not the court erred in charging the jury that the evidence introduced by the plaintiff was sufficient to entitle her to recover.

Errors Assigned.

The court below held, that one Henry Holmes, who was called to be sworn as a juror in the case, was not obliged to answer any questions put to him by defendant's attorney touching his qualifications as a juror and cause of challenge, under section 820 of the Revised Statutes of the United States; and overruled the challenge of said juror on the ground specified in said section.

This decision is assigned as an error. Rec., p. 1.

Second error.

The court erred in instructing the jury that if they found from the evidence that the plaintiff had been in possession of the lot, in the second count mentioned, holding adversely for a period of seven years, at any time between the years A. D. 1848, and 1860, she would have the right to recover as against the defendant, who rests his defense upon possession alone. Rec., p. 2.

Third error.

The plaintiff in the court below claimed title to lot in the first count mentioned, under a deed from Mordecai & Kerr. There was no evidence to connect the plaintiff's possession with such deed, or that the grantors were in possession when such deed was executed, and the court erred in charging the jury that if they believed the grantors in said deed delivered the possession of the lot in question to the plaintiff when said deed was de-

livered, that would be presumptive evidence that they had possession prior to the delivery of such deed. Rec., p. 2.

Fourth error.

The court erred in instructing the jury that if they found from the evidence that the plaintiff moved away from the lot, in the first count mentioned, and that other persons were found in possession when the plaintiff had an agent in the city, the presumption would be that they held possession with plaintiff's permission; and that if the jury believe that plaintiff took possession of this lot under color of title and has never abandoned it, such possession, and the deed from Mordecai & Kerr, to the plaintiff, shows sufficient title and right of possession to enable the plaintiff to recover against the defendant, who relies on possession alone. Rec., p. 2.

Fifth error.

The court erred in instructing the jury that the deed from Memminger & Ravenel to Mordecai & Kerr, in which the grantors are described as assignees of Charles Edmonson, *but executed by them individually*, was a good deed. Rec., p. 2.

Sixth error.

The court erred in instructing the jury that the defendant, in introducing the deed from Memminger & Ravenel to Mordecai & Kerr, to show that the estate of Edmonson was outstanding, admitted all the facts stated and recited in such deed. Rec., p. 2.

The proceedings in the State Court are not material, further than to show that the value of the property exceeds $5,000.

ARGUMENTS AND POINTS OF LAW.

First and second exceptions.

The court below ruled that Henry Holmes, called to be sworn as a juror in this case, was not compelled to answer any questions touching his qualifications as a juror, under section 820 of the Revised Statutes; and said Holmes refusing to make answer to such questions, was challenged on the ground that he was disqualified under said section of the Revised Statutes, and the court overruled such challenge. Rec., pp. 11, 12.

This decision of the court was excepted to. Where a statute prescribes certain causes of challenge and disqualification of jurors, the usual way of ascertaining whether or not a juror is disqualified, is to ask the juror himself. Mr. Holmes did not for himself claim that he might criminate himself by answering such questions. Under the operation of the amnesty proclamation he was pardoned of the offense of treason if he had ever been guilty of it.

Refusing to answer questions touching his qualifications, was tantamount to an admission that he was disqualified.

The fact, that this juror was afterwards challenged peremptorily and was thus kept off the jury, does not cure the error. A decision of the Court was made, and a rule established, which denied the plaintiff in error his legal right under section 820 of the Revised Statutes. It was the denial of the right of a legal jury, and it was not necessary to repeat the challenge to every other juror.

We insist that the first and second exceptions are well taken.

U. States vs. *Hammond et al.*, 2d Woods, C. C. R.

Second Exception.

A statement of the evidence upon which the Court gave the instructions to which this exception was taken, will be found on page 18 of Rec. No deed of conveyance of this lot, in the second count described, was put in evidence; the right to recover on this count is predicated upon an asserted *prior possession.*

The only evidence of any prior possession on the part of the plaintiff, is the testimony of one Alfred D. Royero, that in the *year* 1842 he leased this lot of land for a short time from a person who claimed to be *the plaintiff's agent.*

This is all the evidence upon which the plaintiff obtained a verdict and judgment, under the charge of the Court. Rec. pp. 14, 18.

This case was tried in 1875. *Plaintiff had not resided in the State for thirty years;* that is since 1845. Rec. pp. 46, 47, 48 marginal. Her husband had been dead for twenty years. Rec. p. 46 marginal.

Plaintiff proves no paper title; but upon the brief and obscure statement of a single witness, that for a short time in 1842, he leased this lot of land from a person claiming to be plaintiff's agent; she claims a recovery. It is true, in the third exception, (Rec. p. 18,) the Court states that *this alleged agent paid* taxes from 1857 to 1860, but by reference to Mr. Royero's testimony, (p. 14,) it will be seen this is an error. This witness testifies that this agent paid taxes on lot mentioned in the *first count* from 1857 to 1860, but not that in the second count described.

The Court charged the jury upon this branch of the case as follows: "the plaintiff has not introduced any deed, or paper title to the land, described in the second count of the declaration. She claims the right to recover this lot of land upon possessory title alone, and the Court instructs you that actual possession *for the period of seven years, after the year A. D.* 1848, *would give a good title to*

the plaintiff and would justify you in finding a verdict for the plaintiff." Rec. p. 18.

Assuming that prior possession alone would entitle plaintiff to recover in any case, we submit that this charge is clearly erroneous. Such possession must in any event be *open*, *notorious*, *adverse*, and *continuous* for the statutory period, and must be based *upon color and claim of title.*

Tyler on Ejectment, pp. 859, 860, 861.

Here there was no pretense of continuous possession, nor of any possession, except the shadowy one of a person *claiming* to be agent (without evidence of such agency) exercising the right to lease the premises in 1842. Nor does the plaintiff pretend that her alleged prior possession commenced under color of title.

The court further charged that if the "plaintiff had been in the possession of this lot, holding adversely *for a period of seven years at any time between* the year A. D. 1848 and 1860, she would have a right to the possession at the time the suit was brought, as against the defendants, who rest their defense upon possession alone, and you will find a verdict for plaintiff."

This was equivalent to saying that the seven years' possession need not have been continuous, and that possession alone for this period between these dates gave plaintiff a better title than the defendants' possession, which has been continuous since 1863. Rec., p. 15.

The charge of the court states that defendant rests his defense upon possession alone. Believing that plaintiff had made no case, defendant introduced no evidence, and in this sense and no other does the defendant rest his defense upon possession alone. There was no evidence offered or claim set up that defendant was an intruder, or that he did not have *that perfect title and right of possession which the law* presumes every person in possession has.

But we deny that a plaintiff in ejectment can recover on the strength of a prior possession, though open, notorious, continuous, and adverse for the statutory period, *against a defendant lawfully in possession.*

In the New York cases, where a recovery was had on prior possession, it was shown affirmatively that defendant *was an intruder or wrong-doer.*

Tyler on Ejectments, p. 72.

In *Whitney* vs. *Wright*, 15th Wendall R., 171;
Jackson vs. *Drew*, 5th Cowen R., 200;
Livingston vs. *Walker*, 7th Cowen R., 637;
4th Johns. R., 210;
3d Ohio R., 57;
3d Ohio R., 388;
6th Ohio R., 164;
18th Ohio R., 323;
14th How. S. C. R., 292—

this doctrine of the sufficiency of a prior possession, to enable a plaintiff in ejectment, is discussed, and in every case the court held that recovery could not be had except as against an intruder or wrong-doer.

Present possession of defendant is presumed to be in amity with the legal title, and plaintiff must rebut this presumption before a mere prior possession can avail him.

Every possession will be presumed lawful *which is not proved to be wrongful*, and he who claims a recovery on prior possession must prove defendant's possession unlawful.

7th Wheaton's R., 107, 108.

Besides, such prior possession must have been under color of title, according to all the authorities.

Again, such prior possession must be such an adverse possession as the statute requires to be a good defense.

"Where it shall appear that there has been an *actual, continual* occupation of premises *under a color of title*, exclusive of any other right, but not founded upon a written instrument, as a judgment or decree, the premises *so actually occupied, and no other*, shall be deemed to have been held adversely."

Sec. 7th, Laws of Florida, 1872.

"For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, judgment or decree, land shall be deemed to have been possessed and occupied in the following cases: First, where it has been protected by a substantial enclosure; or, second, where it has been usually cultivated or improved."

Sec. 8th, Laws of Florida, 1872.

The plaintiff, as to this lot in the second count, has not brought herself within either of these sections. She proves herself that she has not been in its actual possession since 1842, and has not proved that this parcel of land has been under a substantial enclosure, nor that it has been usually cultivated or improved.

The charge of the court not embracing these qualifications is erroneous, and the judgment should be reversed. It is a joint judgment for both lots, and if reversed as to one, it must be reversed as to the other.

FIRST COUNT.

Fourth exception.

Plaintiff was allowed to read in evidence copy of deed to her from Mordecai & Kerr *for the purpose of showing color of title.* Rec., pp. 12, 19.

There *was no evidence that the grantors* in said deed ever had possession, or that plaintiff ever acquired possession under it.

Witnesses Rogers and Ferrara testify that plaintiff lived on this lot two years, from 1845 to 1847, and then moved off. They have not occupied it since. Rogers testifies that a person claiming to be plaintiff's agent paid taxes on it from 1857 to 1860, and no one has been in possession since 1863 but defendant. Rec. pp. 14, 15, 19.

According to the testimony there was an interval of ten years, from '47 to '57; that plaintiff is not shown to have exercised any ownership over the lot, and none from '57 to 60, but payment of taxes, and none whatever since 1860.

The Court charged the jury:

"If you believe from the evidence that the plaintiff received the deed of conveyance from Mordecai & Kerr, of which a copy has been read to you, that would be color of title; and if you believe the grantors in said deed, Mordecai & Kerr, *delivered the possession of the lot in question* to the plaintiff when said deed was delivered, that would be presumptive evidence that they had possession prior to the delivery of the deed." Rec., p. 19.

The objection to this part of the charge is that it was not warranted by the testimony. There was not a *particle of evidence connecting plaintiff's possession with this deed.*

Court further charged:

"If you find that the plaintiff moved from this lot in 1847, and that *other persons were afterwards found* in possession, when the plaintiff had *an agent in the city*, the presumption would be that they held possession under plaintiff's permission." Rec., p. 19.

We deny that the law of presumptions authorizes any such charge to the jury. It would be strange doctrine that a person in possession of real estate must be presumed to hold by consent of the plaintiff simply because the plaintiff had an agent *in the city* in which such estate was located.

The evidence showed a clear case of abandonment.

Whitney vs. *Wright*, 15th Wend. R. 171.

The language of the declaration is tantamount to a claim of a title in fee. Rec., p. 6.

The deed under which plaintiff claims does not purport to convey its fee, but only *such estate* as Charles Edmonston had. Rec., p. 12. This does not sustain the averment in the declaration, and the charge of the court that it was sufficient is erroneous.

Fifth Exception.

The court further charged the jury :

" The defendant read in evidence the copy of the deed from Memmingers & Ravenel to Mordecai & Kerr, for the purpose of showing that no estate was conveyed by that deed, and that such estate as Charles Edmonston had in the lot in question was still outstanding. The court charges you that the fact that said deed describes the grantors as assignees of Charles Edmonston, and that they signed their names only, without the words, " assignees of Chas. Edmonston," does not vitiate the deed. The deed was sufficient to pass all that it purported to convey. The court further charges and instructs you that by the introduction in evidence of this deed by the defendant, the defendant has admitted as true every fact contained or stated in the deed." Rec., p. 20.

This deed shows that the grantors did not claim to have any estate in their individual capacity, in which they sign the deed. We believe the true rule to be that the grantors must execute the deed in the capacity in which they purport to convey.

We deny that where a piece of evidence is offered for a particular purpose, that the party so offering it *is bound by all the recitals in it.* Defendant was a stranger to this deed, and the doctrine of recitals only bind parties and

privies. The deed was introduced to show that it was not properly executed, but the ruling of the Court would make the defendant admit that the estate of Edmonston had been conveyed to Memminger & Ravenel, as assignees, of which there was no other evidence.

Neither the doctrine of admissions nor of estoppels, warrants this charge to the jury.

H. BISBEE, JR.,
Attorney for Plaintiff in Error.

Supreme Court of the United States.

GEORGE BURT, Plaintiff in Error,

vs.

MARIA M. POUJAUD, Defendant.

BRIEF.

JAMES. M. BAKER, Attorney for Defendant.

Supreme Court of the United States.

GEORGE BURT, Plaintiff in error,
vs.
MARIA M. POUJAUD.

BRIEF OF JAMES M. BAKER, ATTORNEY FOR DEFENDANT.

In this cause six errors in the rulings and charges of the Court have been assigned. The first, is to the ruling by the Court below, upon the challenge of Henry Holmes, presented as a juror, under section 820 of the Revised Statutes of the United States.

Section 1 of the act by Congress, making participation in the insurrection or rebellion against the United States, a cause of disqualification and challenge of grand and petit jurors, was passed June 17th, 1862, which said section was repealed by the latter clause of section 5 of the act of Congress, entitled "An Act to enforce the provisions of the Fourteenth Amendment of the Constitution of the United States, and for other purposes." Passed April 20th, 1871.

The said section 5 of the act of April 20th, 1871, appears in the Revised Statutes as section 822, but amended by striking out the latter clause, which repealed the first section of the act of June 17th, 1862.

The 820th section of the Revised Statutes, adopted June 22d, 1874, re-enacted section 1 of the act of June 17th, 1862, previously repealed, and again made participation in the late rebellion a cause of disqualification and challenge of jurors.

Thus it appears that the law under which was claimed the right to challenge said juror, for causes therein stated, was not passed until June 22d, 1874.

Previous to the adoption of said section 820 of the Revised Statutes, to-wit: on the 25th day of December, 1868, the President of the United States issued his proclamation, extending universal amnesty and pardon to every person who directly or indirectly participated in the late rebellion, restoring them to all rights, privileges and immunities under the Constitution and laws of the United States.

Said section 820 of the Revised Statutes, invoked as authority for challenging the juror Holmes, in the Court below, was passed in violation of the 3d clause of the 9th section of article 1 of the Constitution of the United States, which provides that "No bill of attainder or *ex post facto* law shall be passed."

"A Bill of Attainder is a legislative act which inflicts punishment without a judicial trial. If the punishment is less than death, the act is termed a bill of pains and penalties.

"Within the meaning of the Constitution bills of attainder include bills of pains and penalties. These bills are generally directed against individuals by name, but they may be directed against a whole class."

Cummings vs. the State of Missouri.
4th Wallace, page 323.

Section 820 is a legislative act, which, if enforced, would deprive a large class of citizens of a civil and legal right, as a penalty or punishment for having participated in the late rebellion against the United States, nearly ten years previous to its passage, and "without a judicial trial."

Said section 820 also imposes a penalty or punishment for an act which was not so punishable at the time it was committed, and is an "*ex post facto* law" within the meaning of the Constitution of the United States.

This law was enacted nearly six years after the President of the United States issued his proclamation of general amnesty and pardon. And this Court, in commenting on the effect of the Executive's pardon so issued, as applied in the case of *ex parte* Garland, 4th Wallace, 380, say: "That Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders. The benign prerogative of mercy reposed in him cannot be fettered by any legislative restrictions. A pardon reaches both the punishment prescribed for the offence and the guilt of the offender, and when the pardon is full, it releases the punishment, and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching. If granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity."

It was two years after this decision by the highest judicial tribunal of our country, and in view of this opinion as to the effect and operation of a pardon, that the President issued his said amnesty proclamation.

It has been urged that said act does not prescribe any punishment, but leaves the party to disqualify himself or not; to determine his own guilt or innocence; to try and condemn or acquit himself. Yet if he refuses to answer or take a prescribed oath, he is in effect convicted, and the penalty at once attaches—he is deprived of civil and legal right.

In this case, Mr. Holmes was asked if he had committed a certain crime mentioned in the act. He refused to answer. He was not bound to accuse himself, or to answer any question that would have a tendency to expose him to a penal disability, or liability to any kind of criminal charge.

1st Greenleaf, § 451 *and* 453.
5th Amendment to the Constitution.

The statute does not require the juror to disqualify himself, and no effort was made to prove his disqualification by other

testimony. He ought not, under such circumstances, to be presumed guilty, and required to submit to a penalty attached to the supposed offence. The Court held properly that he was not bound to answer the question, "whether he had participated in the late rebellion."

The record in this cause (page 10), shows that no motion was made by defendant's counsel to require the juror, Holmes, to take the oath prescribed in section 821 of the Revised Statutes, and that no ruling of the Court was made upon the provisions of that section.

It is urged that the said act, although passed expressly for the purpose of disqualifying a large class of citizens from serving on juries in the United States Courts, do not deprive such citizen of any civil or legal rights, and that such disqualification is not in the nature of a penalty.

The Congress of the United States has recognized the principle, that to serve on juries is a "civil and legal right" of every citizen. In the act of March 1st, 1875, entitled "An act to protect all citizens in their civil and legal rights," the preamble asserts the following general principles: "Whereas, it is essential to just government, we recognize the equality of all men before the law, and hold that it is the duty of the Government in all its dealings with the people to mete out equal and exact justice to all, of whatever nativity, race, color or persuasion, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law."

In the 4th section enacts:

"That no citizen possessing all other qualifications which are or may be provided by law, shall be disqualified for service as grand or petit juror in any court of the United States, or of any State, on account of race, color, or previous condition of servitude;" and makes it a misdemeanor for any officer to exclude any citizen from serving on the jury for such cause, punishable by fine of five thousand dollars.

U. S. Statutes, 1875, 2 *Ses.*, *p.* 335.

In this act of Congress the "civil and legal right" of every citizen to serve on the juries of the United States Courts, is declared to be a "great fundamental principle," and is secured to the colored race under heavy penalties.

This "civil and legal right" had long previously vested in the white race, and will doubtless be protected whenever assailed.

Having shown that the privilege of serving on the juries of the United States is a civil and legal right, it seems clearly to follow that a law depriving a citizen, or a class of citizens, of that right, would be, in the meaning of the Constitution, a bill of pains and penalties.

This doctrine is sustained by the decision of this Court, in the case of Cummings *vs.* the State of Missouri, 4th Wall., 320: "The deprivation of any rights, civil or political, previously enjoyed, may be punishment, the circumstances attending, and the causes of the deprivation, determining this fact."

The record on page 10 shows that the juror, Henry Holmes, challenged for participation in the late rebellion, was not one of the panel that tried the cause, and that the defendant's cause was not prejudiced by the ruling of the Court, twelve men having been procured to whom no objection could be urged under said act.

The second error assigned, is to the charge of the Court, that the plaintiff would have the right to recover possession of the lot described in the second count of the declaration, by showing an adverse possession for seven years, as against the defendant, who rested his defense on possession alone.

By the act of the Legislature of Florida, approved January 8th, 1848, it is enacted "that no person or persons who has now, or may hereafter have, any right or title of entry into any lands, tenements, or hereditaments, shall make entry thereon, but within seven years after such right or title shall accrue, and such person or persons shall be barred from any entry afterwards, as against all and every adverse possession thereof for the term of seven years.

Pamphlet Laws of Fla., 1848, *p.* 13.

This charge of the Court is fully sustained by the highest authorities, both in this country and in England.

Chief Justice Kent, in his opinion in the case of Smith *vs.* Lorillard, 10th John R., p 356, says: "It is not necessary that a plaintiff in ejectment should in every case show a possession of twenty years or a paper title. A possession of a less period will form a presumption of title sufficient to put the tenant on his defense. A prior possession short of twenty, under a claim or assertion of right, will prevail over a subsequent possession of less than twenty years, when no evidence of title appears on either side."

The principle of law given in charge by the Court in the case now before the court, was more favorable to the defendant than the doctrine asserted in the New York case; in the latter, a possession of less time than that specified in the statute of limitation, was held sufficient to sustain an action of ejectment.

The following authorities are referred to as further sustaining the charge of the Court:

Vol. 1 *Best on law of Ev.*, 68.
Tyler on Ejectments, 71 *and* 72.
Allen vs. Remington, 2 *Saunders*, 111.
Hartley vs. Ferrel, 9 *Florida*, 375.
Jackson vs. Hubble, 1 *Cown*, 613.

The testimony of Mr. Rogero, (p. 14 of record,) fully justifies the charge of the Court as applied to lot described in the second Court in the declarations. He says: "In 1842, I leased the lot as described in the second Court in plaintiff's declaration, from Mr. Solano as plaintiff's agent. He claimed to be in posession as agent for all the plaintiff's property after she left St. Augustine." "Was a family counsellor," and that he returned plaintiff's property in St. Augustine, and paid taxes for it as late as 1857 to 1860.

The Court properly left it open to the jury to judge of the sufficiency of the evidence to establish the possession by the plaintiff.

Bradstreet vs. Huntington, 5 *Petus*, 441.

The principles of law given in that portion of the charge contained in the third and fourth assignment of errors, have not been called in question, and there can be no doubt of the

correctness of the legal propositions therein submitted to the jury. The evidence contained in the record (pages 14 and 15), shows that the plaintiff went into posession of the lot on Charlotte street, mentioned in the first Court, in the year 1845, corresponding with the date of the deed to plaintiff from Mordecai & Kerr. It shows that the plaintiff at that time was put in actual possession, and held a paper title to the property. That she kept an agent in St. Augustine who continued to exercise control over the property in her name, and to pay taxes thereon as late as 1857 to 1860. Every fact given in evidence tends to show continued posession, ownership and control, and clearly rebuts any presumption of abandonment by the plaintiff, if any such could arise. Possession under a paper title, once acquired, abandonment could not be presumed, but must be proven.

The defendant made no attempt to show any title to the property in question in himself, and stands on the record as a mere intruder.

The only evidence introduced by the defendant, was the deed of Ravenel & Memenger to Mordecai & Kerr, (on page 16 of record). The fifth and sixth errors assigned, are to the charge of the Court, as to the effect of the testimony thus introduced.

By the introduction of said deed, the defendant, in the Court below, admitted all the statements and recitals therein contained, as well as the proper execution of the deed. When a party introduces a deed or instrument of writing as evidence to a jury, he does so under the rule of evidence, that every part of such deed or writing, whether in his favor or against him, is to be considered by the jury. The recital in this deed showed that Edmonston conveyed the property in dispute to Ravenel & Memenger, as assignees, on the 3d day of June, 1837. That all title had passed out of him, and had vested in the said Ravenel & Memenger as his assignees, and that as such assignees, they conveyed the said property to the grantors of the plaintiff. This evidence was conclusive on defendant, and he would be estopped from denying it.

Recitals in deeds, other than family deeds, are also admitted in evidence when corroborated by long and peaceable possession according to the deed.

1 *Greenleaf on Ev.* §. 104.

The record shows that the deed from Ravenel & Memenger to Mordecai & Kerr, introduced in evidence, and containing said recitals, was entered on the public records of the county of St. Johns, Florida, and city of St. Augustine, where said is situated, in the year 1847, (page 18 of record), and the deed from Mordecai & Kerr to plaintiff, entered July 24th, 1845. (See page 14th of record). And it does not appear that the validity of said deeds has ever been disputed by Edmonston, or any one else.

It was not necessary for the plaintiff below to trace her title to the first grantor to entitle her to recover.

The Supreme Court of Florida, in the case of Hartley *vs.* Ferrel, say: "It is undoubtedly true, as insisted by the counsel for the appellant, that in an action of ejectment, the lessor of the plaintiff must recover on the strength of his own title, and not through the weakness of defendant's.

This is a canon of the common law, and its authority has never been questioned, however its application has been misunderstood. The application of this principle is not to be understood as requiring the plaintiff, in making out his title, shall be compelled in the first instance to trace the chain back to the first grantor, but only that he shall exhibit so much, as will put the defendant to the support of his possession, by a title superior to one of mere naked possession."

JAMES M. BAKER,
Attorney for Defendant.